CHAPTER 90: CRITICAL AREAS UPDATE
MARCH 24, 2016

PLANNING COMMISSION STUDY SESSION

AGENDA

Policy discussions on:

- Follow-up on Wetland Buffer Standards
- Nonconformances
- Permitted Uses and Activities
- Exceptions

BACKGROUND – BUFFERS & NONCONFORMANCES

- Existing structures and improvements in a buffer or setback not affected by new regulations - "grandfathered" in
- Existing or proposed structures and improvements not in a buffer or setback not affected by new regulations
- New structures, enlargements of existing structures, or new landscaping with non-native vegetation would be restricted if located in a buffer (**focus area tonight**)
- Regulations must meet accepted Best Available Science (BAS) under GMA
- City does have some flexibility with setbacks from buffers, minor improvements in buffer, off-site mitigation, and nonconformances

CURRENT BUFFER APPROACH

- Establish Buffer Standard
- Allow reductions of degraded buffers
- Win-win:
  - Development objectives achieved
  - Community gets net improvement in wetland/stream functions & values
- **2035 Plan:**

  Policy E-1.3: Manage the natural and built environments to achieve no net loss of the functions and values of each drainage basin; and proactively enhance and restore functions, values, and features

DEGRADED


C EXISTING CONDITIONS
1 Reed canarygrass (invasive species)
2 Himalayan blackberry (invasive species)
3 Channelized stream (low habitat value)
4 Impassable culvert (fish barrier)
5 Manicured vegetation (low habitat value)
6 Critical area encroachment
7 Scotch broom (invasive species)
8 Butterfly bush (invasive species)
THE WATERSHED COMPANY

ENHANCED


MITIGATION & RESTORATION EXAMPLES
3 Years Post-Restoration
1 Native Sedges & ground cover
2 Native shrubs
3 Biodiversity (habitat value)
4 Healthy wetland (habitat value)
5 Fish passage culvert
6 Habitat structures
7 Conifer trees
8 Vegetated channels (erosion control)
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WETLAND BUFFER WIDTHS (ECOLOGY BAS)

- **Functioning buffer width standard (narrower)**
  - Fully functioning, native vegetation, mitigation measures applied
  - No reductions, averaging ok

This is actually the goal

If Not

- **Degraded buffer width standard (wider)**
  - 25% reductions with restoration (make it a functioning buffer) and & mitigation measures
  - Averaging ok

OTHER JURISDICTIONS WETLAND BUFFER WIDTH

- Woodinville, Redmond, Renton, (post 2014 DOE updates)
  - Redmond – higher, allows reductions
  - Others – narrower, but may require increase. Amount of increase tbd, case-by-case
  - Averaging allowed, some appear to allow reductions
- Bellevue, Bothell, Kenmore, and King Co still using old buffer width standards

Jurisdiction	Standard Buffer Width (in feet, based on habitat score, by Wetland Category) (Includes both 2004 and 2015 rating systems)											
	II				III				IV/Other			
	3-4 (<20)	5	6-7 (20-28)	8-9 (29-36)	3-4 (<20)	5	6-7 (20-28)	8-9 (29-36)	3-4 (<20)	5	6-7 (20-28)	8-9 (29-36)
Dept. of Ecology Recommendation for *poor quality buffers* (Table 1 in staff memo)	100	140	220	300	80	140	220	300	55			
Dept. of Ecology Recommendation for *well-vegetated buffers* (Table 2 in staff memo)	75	105	165	225	60	105	165	225	40			
Woodinville (2016)	75	105	165	225	60	105	165	225	40			
Redmond (2015)	100		150	300	80		150	300	50			
Renton (after 2014)	100		150	175	75		100	125	50			
Kenmore[1]	100*				60'**							

[1] Buffer widths in Kenmore were established through a community-specific evaluation of all wetlands within the City.

RECOMMENDATION FOR WETLAND BUFFERS WIDTH

Current wetland buffers in KZC 90

Wetland type	Buffer in primary basin (feet)	Buffer width in secondary basin (feet)
I	100	75
2	75	50
3	50	25

Current wetland buffers in SMP

Wetland Category	Range of Buffer widths based on habitat score (feet)
I: Bogs	215
I: All others	125-215
II	100-200
III	75-125
IV	50

- ***Staff recommendation:*** *Degraded buffer width standard with option to reduce and average buffer.*

  Reduction of functioning buffer would result in the buffer width of degraded buffer

Table 2 Well Vegetated Functioning Buffer Widths (Ecology BAS) with no reduction

Wetland Type	Buffer width (in ft.) baaed on habitat score 3-4	5	6-7	8-9
I: Bogs	--	190	--	225
I: All others	75	105	165	225
II	75	105	165	225
III	60	105	165	225
IV	40	40	40	40

Table 1. (Recommended) Degraded Buffer Widths (Ecology BAS) with option to reduce and average with mitigation

Wetland Type	Buffer width (in ft.) baaed on habitat score 3-4	5	6-7	8-9
I: Bogs	--	250	--	300
I: All others	100	140	220	300
II	100	140	220	300
III	80	140	220	300
IV	55	55	55	55

SINGLE FAMILY NONCONFORMANCES

Issue: Address existing improvements in the buffer or buffer setback. Wider buffer = more nonconformances

Current rules:

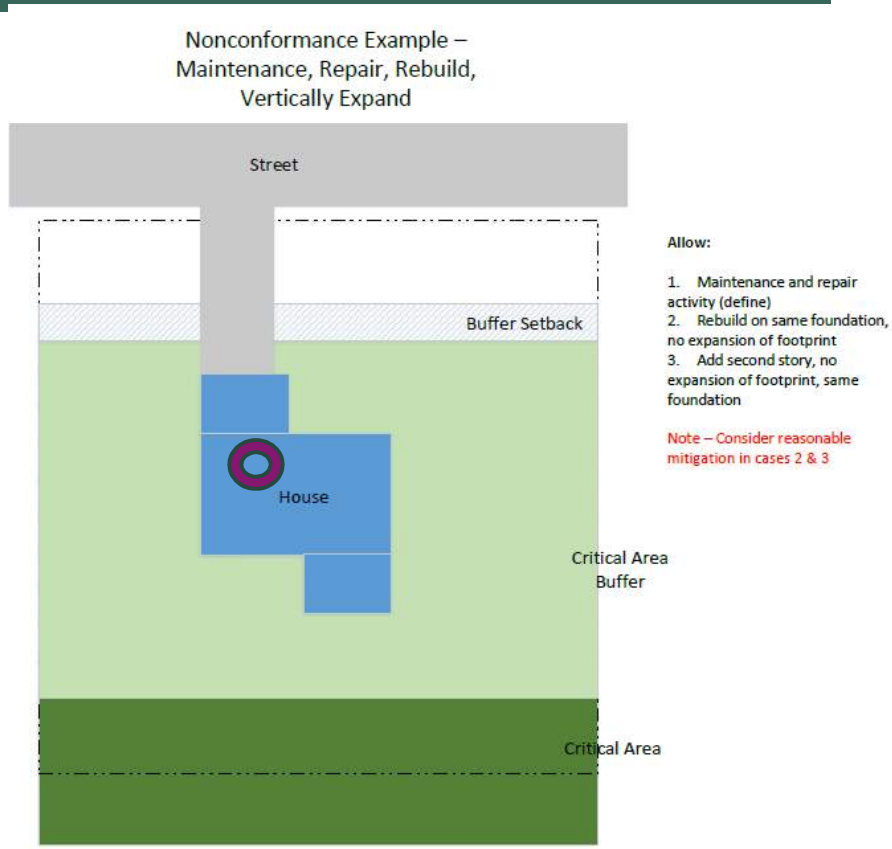
- Existing, legally installed, improvements are grandfathered
- Maintenance and repair of those improvements is allowed
- Maintenance and repair does not include replacement, reconstruction, restoration following casualty if +50% damage
- Expansion of nonconformance not allowed

SINGLE FAMILY NONCONFORMANCES

Example #1 – Same footprint

- Maintenance/repair
- Rebuild on same foundation
- Within existing footprint (donut, 2nd story…)
- Minor changes above grade (bay window, eave…)

*Note – discussion of administrative remedies. If proposal does not fit, move to modification, averaging, reasonable use

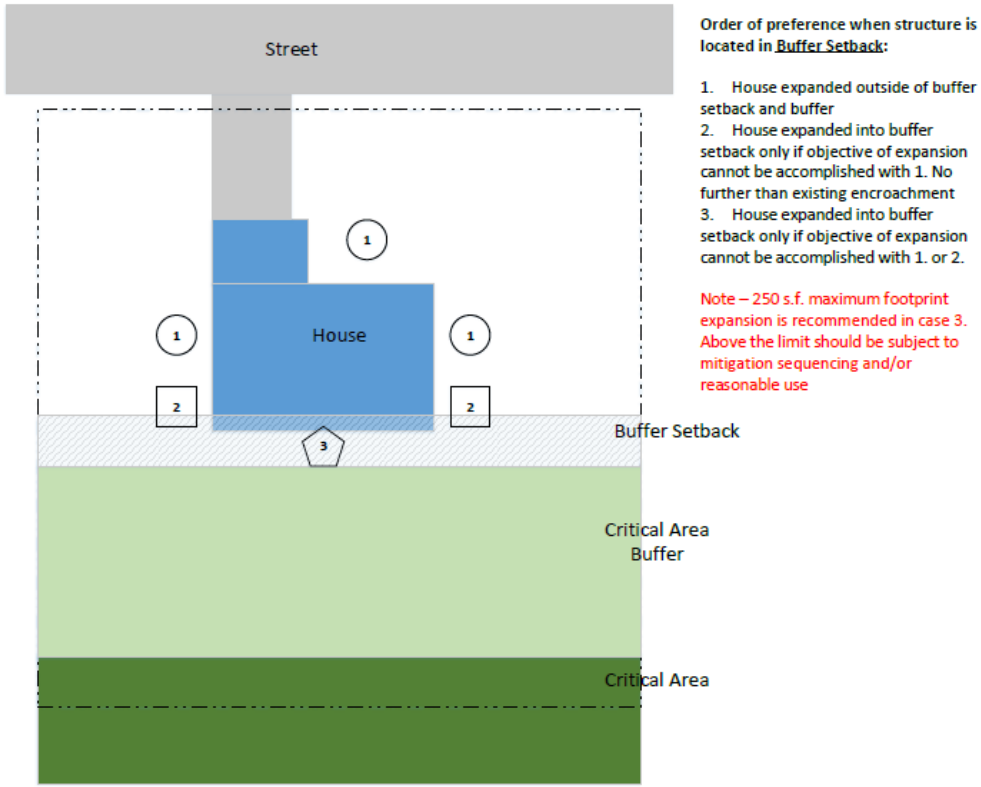


SINGLE FAMILY NONCONFORMANCES

Example #2 – Footprint Expansion in buffer setback

- Require sequencing approach in order of preference
- 250 s.f. cap if further encroachment (3)
- Mitigate for 3

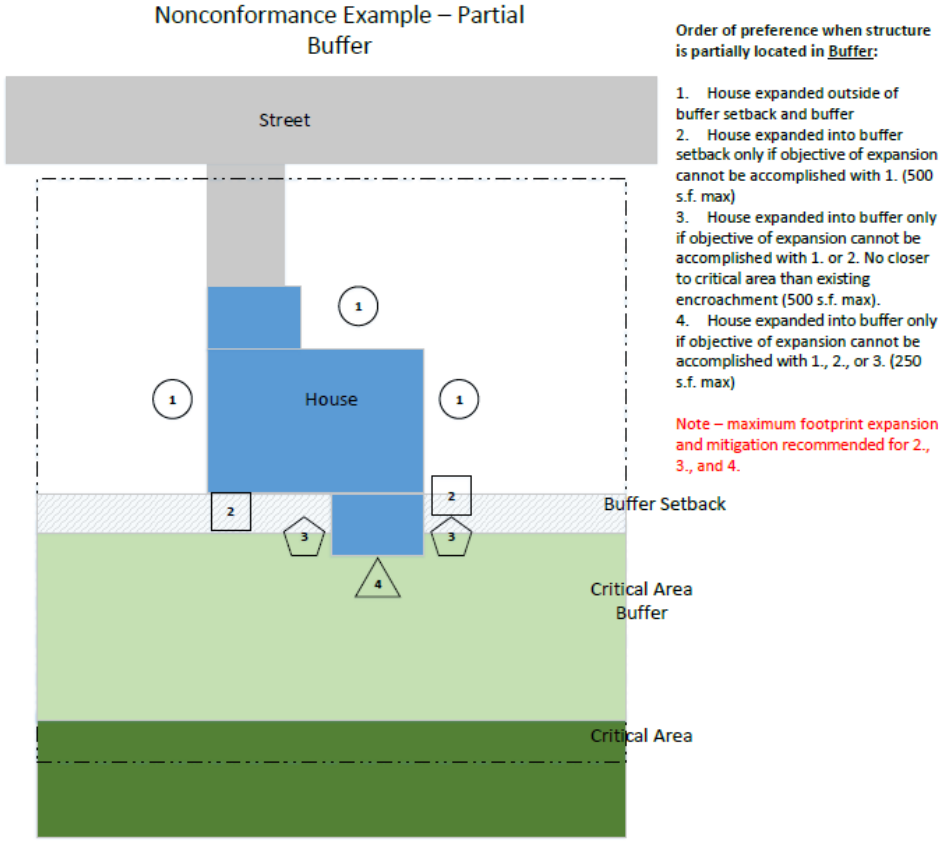
Nonconformance Example – Buffer Setback



SINGLE FAMILY NONCONFORMANCES

Example #3 – Footprint expansion with partial buffer

- Require sequencing approach in order of preference
- 500 s.f. cap if no further encroachment (2 & 3)
- 250 s.f. cap if further encroachment (4)
- Mitigate for 2, 3, 4



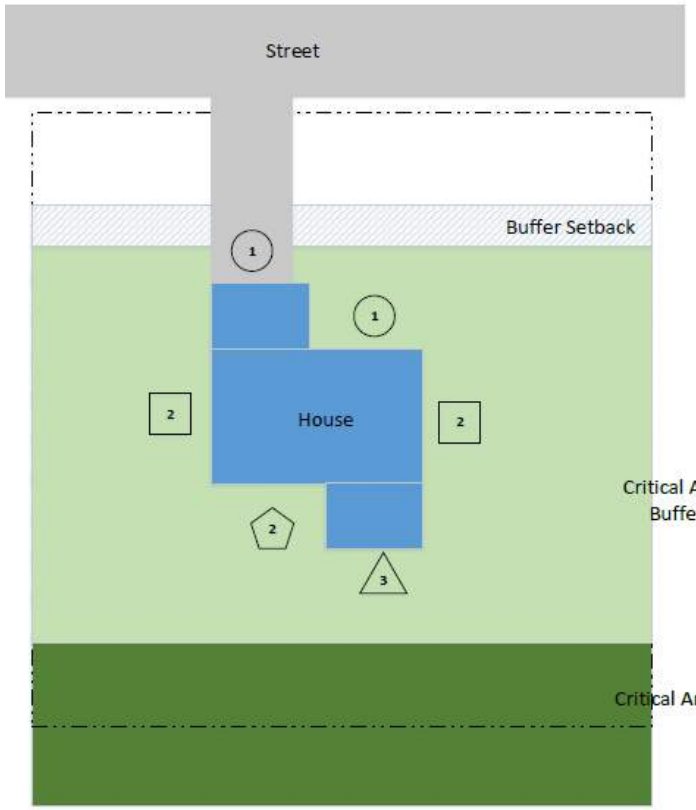
SINGLE FAMILY NONCONFORMANCES

Example #4 – Footprint expansion with full buffer

- Require sequencing approach in order of preference
- 1,000 s.f. cap on opposite side (1)
- 500 s.f. cap if no further encroachment (2)
- 250 s.f. cap if further encroachment (3)
- Mitigate for 1,2, 3

Note – expansions into wetland (fill) not permitted & minimum buffer width must be established (current buffers?)

Nonconformance Example – Full Buffer



Order of preference when entire structure is located in Buffer:

1. House expanded on side opposite the critical area (1,000 s.f. max)
2. House expanded on the sides only if the objective of expansion cannot be accomplished with 1. (500 s.f. max)
3. House expanded further into the buffer only if objective of expansion cannot be accomplished with 1. or 2., but no closer to the critical area that the existing house (250 s.f. max)

Note – maximum footprint expansion and mitigation recommended in all cases

REGULATED USES AND ACTIVITIES IN SENSITIVE AREAS

Clarify those uses and activities that are subject to sensitive area regulations (page 16-18)

- Existing description of regulated activities: "…activities, work, and conditions near any stream, wetland, frequently flooded area or lake in the City."
- Ecology's sample ordinance recommends more specific list (summarized):
  - Removal, excavation, grading or dredging of material of any kind;
  - Dumping of, discharging of, or filling with any material.
  - Draining, flooding, or disturbing the water level or table;
  - Construction, reconstruction, demolition, or expansion of any structure;
  - Destruction or alteration of wetland vegetation.
  - Activities that significantly change water temperature, physical or chemical characteristic of the sources of water to the wetland, quantity, timing or duration of water entering the wetland/stream; introduction of pollutants.
  - Subdivisions

Staff recommendation: ***Clarify*** *what uses and activities are subject to sensitive area regulations. Staff will bring back list.*

Does the Commission agree?

GENERAL EXCEPTIONS TO SENSITIVE AREA REGULATIONS

- If a proposed activity or use will be located outside of a sensitive area or its buffer, it is not subject to sensitive area regulations.
- Activity and use that is now or is proposed to be located within sensitive area or buffer is regulated.
- Permit **exceptions** enable activities and uses to be located in sensitive areas/buffers that are deemed to have **little or no environmental impact, are temporary, or emergencies.**
- The following exception issues are those that staff has identified thus far. Additional exception topics will be discussed at future meetings.

EXCEPTIONS TO SENSITIVE AREA PERMITS

Exceptions:

- Activities or conditions in wetlands or streams or their buffers that have **little or no environmental effect on sensitive area structure and functions** (including its water, soil, or vegetation), are **temporary,** or are an **emergency** that threatens public health or safety.
- Do not require a permit
- Are **not** subject to mitigation sequencing:

(Analysis to reduce impacts within framework of project's objectives, in order of preference)

ISSUES WITH EXCEPTION REGULATIONS

1. Clarify **prior administrative authorization** from the planning official (a.k.a. planner) is required for exception. (page 18 - 20)
   - To determine if activity qualifies as an exempt activity

2. Clarify **best management practices** are required (e.g. erosion control and water quality protection, restoration of disturbed areas) (page 18 - 20)
   - To reflect Ecology guidance

3. Clarify that **submittal materials** may be required (e.g. sensitive area delineation and report) (page 21 - 23)
   - To determine if the alteration is within scope of an exception

Does the Commission agree?

ISSUES WITH EXCEPTION REGULATIONS

4. **Issue formal authorization** similar to Shoreline Exception (page 21 - 23)
   - Allows restoration and mitigation to be tracked

5. Define or clarify standards for **Maintenance and Repair** (page 23 - 24)
   - Provides predictability to applicants. Provides context for exemptions in hierarchy of allowed uses

6. Allow exempt activities for Roads and Utilities to encroach into **areas already permanently disturbed** as long as no increase to impervious area. (page 25 - 26)
   - Clarifies under what standards road and utility expansions or improvements are exempt. Meets BAS threshold of no net loss. Other jurisdictions allow this.

Does the Commission agree?

ISSUES WITH EXCEPTION REGULATIONS

7. Require exempt activity to be restored to pre-project condition or better **prior to final inspection** of exempt activity but no more than 1 year out from completion. (page 26 - 27)
   - To establish a time frame for "expeditiously restored". Consistent with DOE guidance and other jurisdictions.

8. Allow maintenance, repair and replacement exception to apply to **private roads/driveways** (page 27-28)
   - Consistent with maintenance repair and replacement of public and private buildings

9. Clarify repair and maintenance exception **does not apply to complete replacement of buildings** (page 28)
   - Per Ecology's guidance, no foundation replacement allowed as an exception, instead subject to non-conformance provisions

Does the Commission agree?

10. Clarify that **maintenance of utilities in public rights-of-way and utility corridors** are exempt activities (page 29)
    - Logical, since more substantial utility work is already exempt

11. Require **retroactive mitigation** for emergencies (page 29 - 30)
    - To minimize long-term impacts to sensitive areas. In accordance with delineation, sensitive area report within timeframe established with underlying permit. Required by other jurisdictions and BAS

Staff Recommendation: Revise General Exception regulations as described in issues 1- 11 above

Does the Commission agree?

ISSUES WITH EXCEPTION REGULATIONS

Consider **Additional** Exceptions (page 30 -33):

1. Allow **maintenance or repair** of existing non-motorized **park trails**
   - Treat the same as exempt maintenance, repair and replacement activities allowed for roads, utilities, and structures.
2. Allow **new** non-motorized **park trails**
   - Subject to standards:
     - In the outer 25% of the buffer,
     - no wider than 5 feet,
     - permeable material,
     - mitigation to address impacts
   - New park trails located further into the buffer or crossing the sensitive area would be considered as an activity other than an exception, subject to mitigation sequencing.
3. **New** non-motorized **public trails, connecting to the Cross Kirkland Corridor**
   - Same standards as #2 above

Does the Commission agree?

ISSUES WITH EXCEPTION REGULATIONS

Consider **Additional** Exceptions (page 30 -33):

4. Allow **electrical and other utility lines connecting to existing lines and poles**

   Treat similarly to exception allowing sewer and water lines to connect to existing lines where no alternative exists.

Does the Commission agree?

NEXT STEPS

- Planning Commission April 14, 2016
  - Continue consideration of policy issues from March 24 meeting, if needed.
- Planning Commission April 28, 2016
  - 3rd round of policy issues